

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Appeals for  
the Federal Circuit and the United  
States Court of International Trade

Vol. 26

MAY 27, 1992

No. 22

*This issue contains:*

U.S. Customs Service

T.D. 92-47 and 92-49

U.S. Court of International Trade

Slip Op. 92-63 Through 92-65

Abstracted Decisions:

Classification: C92/71 Through C92/88

**AVAILABILITY OF BOUND VOLUMES**  
See inside back cover for ordering instructions

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

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# U.S. Customs Service

## *Treasury Decisions*

(T.D. 92-47)

### CUSTOMS APPROVAL OF LOS ANGELES BUNKER SURVEYORS, INC., AS A COMMERCIAL GAUGER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Los Angeles Bunker Surveyors, Inc., as a commercial gauger.

SUMMARY: Los Angeles Bunker Surveyors, Inc., of Wilmington, California recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under Part 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Los Angeles Bunker Surveyors, Inc. meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Los Angeles Bunker Surveyors, Inc. is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 (202-566-2446).

Dated: May 7, 1992.

IRA S. REESE,  
*Acting Director,*  
*Office of Laboratories and Scientific Services.*

[Published in the Federal Register, May 13, 1992 (57 FR 20569)]

(T.D. 92-48)

**EXTENSION OF AMSPEC, INC., CUSTOMS APPROVAL TO INCLUDE ACCREDITATIONS TO PERFORM CERTAIN LABORATORY ANALYSES****AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Notice of the extension of Amspec, Inc., Customs approval to include the accreditation of certain laboratory analyses to be performed for Customs purposes.**SUMMARY:** Amspec, Inc., of Linden, New Jersey, a Customs approved gauger under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs approval to include accreditations to perform the following laboratory analyses at its Linden, New Jersey facility: API Gravity, sediment and water, distillation characteristics, percent by weight of sulphur, Saybolt Universal Viscosity, and anti-knock index.**SUPPLEMENTARY INFORMATION:**

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Amspec, Inc., a Customs-approved commercial gauger, has applied to Customs to extend its Customs approval to include the laboratory analyses named above. Review of Amspec, Inc., qualifications shows that the extension is warranted and, accordingly, has been granted.

**EFFECTIVE DATE:** May 4, 1992.**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, D.C. 20229 at (202) 566-2446.**Dated:** May 8, 1992.

IRA S. REESE,  
*Acting Director,*  
*Office of Laboratories and Scientific Services.*

[Published in the Federal Register, May 14, 1992 (57 FR 20732)]

(T.D. 92-49)

## TUNA FISH - TARIFF-RATE QUOTA

THE TARIFF-RATE QUOTA FOR THE CALENDAR YEAR 1992, ON TUNA CLASSIFIABLE UNDER ITEM 1604.14.20, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1992.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year.

EFFECTIVE DATES: The 1992 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1992.

## FOR FURTHER INFORMATION CONTACT:

Karen L. Cooper, Chief, Quota Branch, Trade Programs Division, Office of Trade Operations, Office of Commercial Operations, U.S. Customs Service, Washington, D.C. 20229, (202/566-8592).

It has now been determined that 33,441,010 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1992, at the rate of 6 percent ad valorem under item 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 1604.14.30 HTSUS.

(QUO-1-CO:T:R:Q)

Dated: May 8, 1992.

MICHAEL H. LANE,  
*Acting Commissioner of Customs.*

[Published in the Federal Register, May 15, 1992 (57 FR 20862)]



# United States Court of International Trade

One Federal Plaza  
New York, N.Y. 10007

*Chief Judge*  
Dominick L. DiCarlo

*Judges*

Gregory W. Carman  
Jane A. Restani  
Thomas J. Aquilino, Jr.

Nicholas Tsoucalas  
R. Kenton Musgrave  
Richard W. Goldberg

*Senior Judges*

James L. Watson  
Herbert N. Maletz  
Bernard Newman  
Samuel M. Rosenstein  
Nils A. Boe

*Clerk*

Joseph E. Lombardi

# THE HISTORY OF THE

## REPUBLIC OF THE UNITED STATES

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OF AMERICA



# Decisions of the United States Court of International Trade

(Slip Op. 92-63)

PEG BANDAGE, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 87-12-01184  
[Court No. 89-10-00552] [Court No. 90-02-00072]

[Actions are consolidated.]

(Dated May 5, 1992)

*Covington & Burling*, (Harvey M. Applebaum, Mark A. Chinen), for plaintiff.  
*Stuart M. Gerson*, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge,  
International Trade Field Office, Commercial Litigation Branch, Civil Division, United  
States Department of Justice, (Nancy M. Frieden), for defendant.

## MEMORANDUM OPINION AND ORDER

GOLDBERG, *Judge*: The court *sua sponte* consolidates Court No. 87-12-01184, previously designated a test case, with Court Nos. 89-10-00552 and 90-02-00072, previously suspended under that test case. The actions will henceforth be entitled Consolidated Court No. 87-12-01184.

## BACKGROUND

Plaintiff, an American corporation, manufactures and imports elastic bandages. Plaintiff contends that its bandages were manufactured using raw materials of United States origin, and processed within the customs territory of the United States. It asserts that the completed elastic bandages were sent to Haiti for minor additional finishing, and that this finishing added only three percent to the cost of production of the completed elastic bandage.

On May 27, 1983, plaintiff requested a ruling from the United States Customs Service ("Customs") that the bandages were properly classifiable under Item 806.20, Tariff Schedules of the United States ("TSUS"), as "articles exported for repairs or alterations," and dutiable at a rate of 10.5 percent. Customs determined that the proper tariff classification of the bandages depended on their "component material in chief value." Specifically, if the component material of the bandages was polyester, they would be properly classified under Item 386.62, TSUS, and dutiable at an increased rate. If the component material of the bandages was cotton, they would be correctly classified under Item 386.50, TSUS, again dutiable at a higher rate.

Plaintiff then requested administrative reconsideration of Customs' ruling, which Customs subsequently denied. On December 29, 1988,

plaintiff filed a Complaint in Court No. 87-12-01184, alleging that the bandages were properly classified under Item 806.20, TSUS. Defendant thereafter filed an answer.

On October 29, 1990, plaintiff, through the same counsel, filed a Complaint in Court No. 89-10-00552 which covered subsequent entries of identical merchandise and alleged the same competing TSUS provisions as those in the Complaint in Court No. 87-12-01184. Defendant then filed an answer. Plaintiff filed its last Complaint in Court No. 90-02-00072 on February 22, 1991. It too was substantially similar to the previous complaints.

On June 14, 1991, plaintiff moved to have Court No. 87-12-01184 designated a test case, with Court Nos. 89-10-00552 and 90-02-00072 suspended under that action. In its motion, plaintiff alleged that each case raised the same legal claims and involved the same relevant facts. Each action sought classification under Item 806.20, TSUS, of identical elastic bandages, which had undergone similar processing in Haiti. Defendant did not object to the motion for test case designation and suspension. Plaintiff's motion for test case designation and suspension thereunder was granted.

On April 2, 1992, the court notified both counsel that it was considering consolidation and requested that the parties file objections to the proposed consolidation, if any. Neither of the parties responded to the court's request. The court now determines that the public interest in "just, speedy, and inexpensive determination[s]" of actions will be better served by consolidation instead of test case/suspension procedures. USCIT Rule 1. Moreover, consolidation will enable the court to meet its "responsibility to manage [its] dockets to provide for the efficient and expeditious termination of controversies." *Men's Wear Int'l. Inc. v. United States*, 13 CIT 817 (1989).

#### DISCUSSION

USCIT Rule 42 provides guidelines under which the court may consolidate actions. It notes that:

[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

As Chief Judge DiCarlo recently noted,

[f]or actions involving a common question of law or fact, the test case/suspension procedure<sup>1</sup> is an available alternative to procedures permitting consolidation of actions under USCIT R. 42(a). Both consolidation and the test case/suspension procedures serve

<sup>1</sup> Pursuant to USCIT Rule 84 (b), an action may become a test case "by order of the court upon a motion for test case designation made after issue is joined." Under USCIT Rule 84 (c), "an action may be suspended under a test case if the action involves an issue of fact or a question of law which is to be the same as an issue of fact or question of law involved in the test case."

to achieve economies of time, effort and expense, and to promote uniformity of decisions.

*Generra Sportswear, Inc. v. United States*, 16 CIT \_\_\_, Slip Op. 92-62 at 4 (1992).

The court understands from *Generra* that when actions involving a common question of law or fact are pending before the court, the court may determine which procedure—consolidation or test-case/suspension—will best avoid unnecessary costs or delays.

The criteria used by Judge Newman in *Morey Machinery Co., Inc. v. United States*, 69 Cust. Ct. 303, 305, 349 F. Supp. 1017 (1972) in denying a motion to consolidate 77 cases, provides useful guidance in choosing between the two alternative procedures:

I approve a policy for consolidation which would serve, practically, to conserve time and expense for the court and the litigants. But I cannot grant a consolidation so visibly rife with potential for an unwieldy and chaotic proceeding.

Similarly, as indicated in *Generra*, consolidation is not appropriate when the actions are so numerous "that consolidation will complicate discovery, make trial preparation overly burdensome and strain the court's judicial resources with a trial of several months duration." *Generra*, Slip Op. 92-62 at 8.

The court finds that the criteria contra-indicating consolidation in *Generra* and *Morey Machinery* are not implicated in the cases now before the court. A trial, and preparation for a trial, will not be unduly burdensome because the three actions involve identical parties, counsel, legal claims, and imported merchandise. Only five protests were filed in the three cases, which collectively involve approximately thirty-one entries. San Juan, Puerto Rico is the port of entry in each case. Moreover, the parties did not object when notified of the court's intention to consolidate. Therefore, the court follows the approach taken in *Nichols & Co. Inc. v. United States*, 80 Cust. Ct. 26, 447 F. Supp. 455 (1978), *aff'd*, 586 F.2d 826 (1978). There, as here, the court *sua sponte* consolidated several actions which were suspended under the same test case. In support of that determination, then Chief Judge Re explained:

[S]ince all three consolidated cases \* \* \* were suspended under the same test case \* \* \* it is clear that they were all found to involve the same issues of fact or law as in the test case. Thus, the "common question of law or fact" which is necessary for consolidation \* \* \* has been satisfied. In view of the requisite common question of law or fact existing in these cases, the court consolidates, *sua sponte*, [these actions].

*Nichols & Co. Inc. v. United States*, 80 Cust. Ct. at 30.

Consequently, the court *sua sponte* determines that the public interest in expeditious determination of customs law disputes will best be served by consolidation of these cases rather than by continuing the test case/suspension procedures.

## CONCLUSION

Accordingly, it is hereby

ORDERED that Court Nos. 87-12-01184, 89-10-00552, and 90-02-00072 are consolidated under Consolidated Court No. 87-12-01184; and it is further

ORDERED that plaintiff submit a consolidated complaint within 10 days from the date of this order; defendant submit a consolidated answer within 20 days from the date of this order; and that within 20 days from the date of this order, the parties propose a scheduling order pursuant to USCIT Rule 16, which provides dates for:

- (1) submission of any remaining motions addressed to the pleadings, discovery, or other preliminary matters;
- (2) completion of discovery; and
- (3) submission of all dispositive motions and requests for trial.

---

(Slip Op. 92-64)

BELTON INDUSTRIES, INC., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT,  
AND GOVERNMENT OF COLOMBIA AND ROYAL THAI GOVERNMENT, DEFENDANT-  
INTERVENORS

Consolidated Court No. 90-09-00474

(Dated May 7, 1992)

## JUDGMENT

CARMAN, *Judge*: Upon consideration of Plaintiffs' Motion for Judgment Upon the Agency Record, Defendant's and Defendant-Intervenors' opposition thereto, and upon consideration of all papers and proceedings herein, it is hereby

ORDERED that the Court's Order accompanying Slip Opinion 92-39, dated March 24, 1992, is vacated; and it is further

ORDERED that Plaintiffs' motion is granted; and it is further

ORDERED that the Department of Commerce shall rescind the following revocation and termination orders:

*Certain Textile Mill Products from Argentina; Revocation of Countervailing Duty Order*, 55 Fed. Reg. 32,940 (1990);

*Certain Textile Mill Products and Apparel from Columbia; Termination of Suspended Countervailing Duty Investigations*, 55 Fed. Reg. 32,940 (1990);

*Certain Textile Mill Products and Apparel from Peru; Revocation of Countervailing Duty Orders*, 55 Fed. Reg. 32,941 (1990);

*Certain Textile Mill Products and Apparel from Sri Lanka; Revocation of Countervailing Duty Orders*, 55 Fed. Reg. 32,942 (1990);

*Certain Textile Mill Products from Thailand; Termination of Suspended Countervailing Investigation (in Part)*, 55 Fed. Reg. 48,885 (1990); and it is further

ORDERED that the Department of Commerce shall, concurrently, reinstate in full force the pre-existing countervailing duty orders and suspended investigations which were the subject of the revocation and termination orders; and it is further

ORDERED that, should the Department of Commerce subsequently propose revocation and termination of these pre-existing countervailing duty orders and suspended investigations which were the subject of the revocation and termination orders in the future, it will do so giving full recognition and effect to the Court's opinion, dated March 24, 1992.

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(Slip Op. 92-65)

NORCAL/CROSETTI FOODS, INC., PATTERSON FROZEN FOODS, INC. AND RICHARD A. SHAW, INC., EACH CALIFORNIA CORPORATIONS, PLAINTIFFS *v.* U.S. CUSTOMS SERVICE, U.S. DEPARTMENT OF THE TREASURY, HON. NICHOLAS BRADY, SECRETARY OF THE TREASURY, JOHN DURANT, DIRECTOR OF COMMERCIAL RULINGS DIVISION FOR U.S. CUSTOMS SERVICE, AND HARVEY B. FOX, DIRECTOR OF OFFICE OF REGULATIONS AND RULINGS OF THE U.S. CUSTOMS SERVICE, DEFENDANTS

Court No. 89-09-00495

(Dated May 7, 1992)

MEMORANDUM OPINION AND ORDER

MUSGRAVE, *Judge*: This Court's Opinion and Amended Judgment of February 27, 1991 is hereby vacated and this action is dismissed for lack of jurisdiction.

# ABSTRACTED CLASSIFICATION

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED
C92/71 4/30/92 Aquilino, J.	E. Gluck Corp.	84-10-01455	716.09-716.45, 715.05, etc. Various rates
C92/72 4/30/92 Aquilino, J.	F. Gluck Corp.	84-10-01500	716.09-716.45, 715.05, etc. Various rates
C92/73 4/30/92 Aquilino, J.	E. Gluck Corp.	85-08-01021	716.09-716.45, 715.05, etc. Various rates
C92/74 4/30/92 Aquilino, J.	E. Gluck Corp.	85-08-01042	716.09-716.45, 715.05, etc. Various rates
C92/75 4/30/92 Aquilino, J.	E. Gluck Corp.	85-9-01152	716.09-716.45, 715.05, etc. Various rates

HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. v. U.S., 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. v. U.S., 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
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C92/76  
4/30/92  
Aquilino, J.

E. Gluck Corp.

85-09-01211

716.09-716.  
715.05, et  
Various r

C92/77  
4/30/92  
Aquilino, J.

E. Gluck Corp.

85-12-01715

716.09-716.  
715.05, et  
Various r

C92/78  
4/30/92  
Aquilino, J.

E. Gluck Corp.

86-03-00362

716.09-716.  
715.05, et  
Various r

C92/79  
4/30/92  
Aquilino, J.

E. Gluck Corp.

86-04-00537

716.09-716.  
715.05, et  
Various r

C92/80  
4/30/92  
Aquilino, J.

E. Gluck Corp.

86-05-00605

716.09-716.  
715.05, et  
Various r

C92/81  
4/30/92  
Aquilino, J.

E. Gluck Corp.

86-09-01134

716.09-716.  
715.05, et  
Various r

C92/82  
4/30/92  
Aquilino, J.

E. Gluck Corp.

86-11-01415

716.09-716.  
715.05, et  
Various r



6.45, etc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. v. U.S., 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
6.45, etc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. v. U.S., 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
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6.45, etc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. v. U.S., 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
6.45, etc. rates	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments, Inc. v. U.S., 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.

# ABSTRACTED CLASSIFICATION D

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED
C92/83 4/30/92 Aquilino, J.	E. Gluck Corp.	86-11-01444	716.09-716.45, 715.05, etc. Various rates
C92/84 4/30/92 Aquilino, J.	E. Gluck Corp.	87-01-00027	716.09-716.45, 715.05, etc. Various rates
C92/85 4/30/92 Aquilino, J.	E. Gluck Corp.	88-7-00578	716.09-716.45, 715.05, etc. Various rates
C92/86 4/30/92 Aquilino, J.	E. Gluck Corp.	90-11-00601	716.09-716.45, 715.05, etc. Various rates
C92/87 4/30/92 Aquilino, J.	E. Gluck Corp.	91-05-00407	716.09-716.45, 715.05, Various rates
C92/88 5/1/92 DiCarlo, J.	Humberto Vidal, Inc.	90-12-00625	6402.99.70 37.5% plus 90 g/pair

HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
688.40, 688.45, 688.43, 688.42, etc. Various rates	<i>Belfont Sales Corp. v. U.S.</i> , 878 F.2d 1413 (Fed. Cir. 1989) or <i>Texas Instruments, Inc. v. U.S.</i> , 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
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688.40, 688.45, 688.43, 688.42, etc. Various rates	<i>Belfont Sales Corp. v. U.S.</i> , 878 F.2d 1413 (Fed. Cir. 1989) or <i>Texas Instruments, Inc. v. U.S.</i> , 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
688.40, 688.45, 688.43, 688.42, etc. Various rates	<i>Belfont Sales Corp. v. U.S.</i> , 878 F.2d 1413 (Fed. Cir. 1989) or <i>Texas Instruments, Inc. v. U.S.</i> , 673 F.2d 1375 (Fed. Cir. 1982).	New York Quartz analog watches, etc.
6402.99.15 6%	Agreed statement of facts	San Juan Footwear





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# Index

*Customs Bulletin and Decisions*  
Vol. 26, No. 22, May 27, 1992

## *U.S. Customs Service*

### Treasury Decisions

	T.D. No.	Page
Commercial gauger, approved: Los Angeles Bunder Surveyors, Inc. ....	92-47	1
Commercial laboratory, extension of analyses accredited to perform: Amspec, Inc. ....	92-48	2
Tuna fish tariff-rate quota for calendar year 1992 .....	92-49	3

## *U.S. Court of International Trade*

### Slip Opinions

	Slip Op. No.	Page
Belton Industries, Inc. v. United States .....	92-64	10
Norcal/Crosetti Foods, Inc. v. U.S. Customs Service .....	92-65	11
Peg Bandage, Inc. v. United States .....	92-63	7

### Abstracted Decisions

	Decision No.	Page
Classification .....	C92/71-C92/88	12

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